

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

UNITED STATES OF AMERICA,

Case No. 12-CR-0013(1) (PJS/TNL)

Plaintiff,

v.

ORDER

DONTE MCKINLEY HOLLISTER,

Defendant.

Donte McKinley Hollister, pro se.

Defendant Donte Hollister pleaded guilty to armed bank robbery and was sentenced to 210 months' imprisonment. This matter is before the Court on Hollister's second motion for a sentence reduction under 18 U.S.C. § 3582(c)(1)(A)(i). For the reasons that follow, Hollister's motion is denied.

Under § 3582(c)(1)(A)(i), a court may reduce a defendant's term of imprisonment if, "after considering the factors set forth in section 3553(a) to the extent that they are applicable," the court finds that "extraordinary and compelling reasons warrant such a reduction" and "that such a reduction is consistent with applicable policy statements issued by the Sentencing Commission." The Sentencing Commission has issued U.S.S.G. § 1B1.13, a policy statement that governs motions under § 3582(c)(1)(A). Because § 1B1.13 was issued when the Bureau of Prisons ("BOP") had the sole authority to bring motions for release under § 3582(c)(1)(A), however, the guideline by its terms is

limited to motions filed by the BOP. Consistent with *United States v. Marcussen*, 15 F.4th 855 (8th Cir. 2021), the Court continues to treat § 1B1.13 as a useful guide in determining how to exercise its discretion while also recognizing that it has the authority to grant a reduction even in circumstances that do not comport with the terms of that provision.

Hollister seeks a reduction in his sentence primarily on the ground that he is at elevated risk from COVID-19 due to his underlying medical condition. There are currently no active infections among inmates at his facility, however, and only three among staff.¹ Moreover, the COVID-19 vaccine, which greatly reduces the risk that COVID-19 poses, has been available to Hollister for well over a year. *United States v. Broadfield*, 5 F.4th 801, 803 (7th Cir. 2021) (“for the vast majority of prisoners, the availability of a vaccine makes it impossible to conclude that the risk of COVID-19 is an ‘extraordinary and compelling’ reason for immediate release”). The risk of COVID-19 is therefore not an “extraordinary and compelling” reason that would warrant reducing Hollister’s sentence.

Hollister also argues that the risk of COVID-19 in combination with other factors, such as his post-sentencing rehabilitation and “the changing sentencing landscape,”

¹See *Inmate Locator*, Fed. Bureau of Prisons, <https://www.bop.gov/inmateloc/> (last visited Nov. 7, 2022); *Coronavirus*, Fed. Bureau of Prisons, <https://www.bop.gov/coronavirus> (last visited Nov. 4, 2022).

together qualify as an extraordinary and compelling basis for a sentence reduction. The Court disagrees. Hollister has not offered any evidence of his post-sentencing rehabilitation, and in any event “rehabilitation is supposed to be the rule, not the exception.” *United States v. Logan*, 532 F. Supp. 3d 725, 739 (D. Minn. 2021). Finally, it is not clear what Hollister means by the “changing sentencing landscape,” but nothing in Hollister’s motion leads the Court to conclude that this factor constitutes an extraordinary and compelling—or even a permissible—reason to reduce his sentence. *Cf. United States v. Crandall*, 25 F.4th 582, 586 (8th Cir. 2022) (“The views of a present-day Congress, like those of a present-day sentencing judge, about the appropriate punishment for a present-day offense do not establish an ‘extraordinary and compelling reason’ for reducing a sentence imposed years ago.”).

ORDER

Based on the foregoing, and on all of the files, records, and proceedings herein, IT IS HEREBY ORDERED THAT the motion of defendant Donte McKinley Hollister for a sentence reduction under 18 U.S.C. § 3582(c)(1)(A)(i) [ECF No. 85] is DENIED.

Dated: November 7, 2022

s/Patrick J. Schiltz

Patrick J. Schiltz, Chief Judge
United States District Court